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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|--------------------------|------------------------------|------------------|
| 10/073,997 | 02/14/2002 | Anthony William Costello | 4502-1003 | 6647 |
| 466 | 7590 | 04/09/2004 | | |
| YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202 | | | | |
| | | | EXAMINER MADSEN, ROBERT A | |
| | | | ART UNIT 1761 | PAPER NUMBER |

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/073,997

Applicant(s)

COSTELLO, ANTHONY WILLIAM

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 8 is/are rejected.
- 7) ☒ Claim(s) 3,6,7,9-11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 3, 6, and 7 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 1 recites, "exposure to a pressure differential or vacuum within the chamber causes the reagent to be released from the bag or container *into* the chamber". However, because claim 3 recites "the reagent is activated by bringing two or more components or substances together by the rupturing or opening of *the container within a barrier bag* or within a vacuum chamber", claim 3 fails to further limit claim 1. Claim 1 recites that the reagent is released from either a bag or container into the chamber *not* into a barrier bag. Thus one could infringe on claim 3 without infringing on claim 1 by releasing the reagent into a barrier bag, and not a vacuum chamber.

2. Claims 9-11 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 1 recites, "exposure to a pressure differential or vacuum within the chamber causes the reagent to be released from the bag or container *into* the chamber". Claim 9 recites the sealed container ruptures thereby "releasing *or activating* the oxygen absorbing agent". Thus

Art Unit: 1761

one could infringe on claim 9 without infringing on claim 1 by rupturing the container and "activating" but not "releasing" the reagent to absorb oxygen in the container. For example, applicant's attention is directed to Kurtz (US 2971851). Kurtz teaches the container is ruptured to *activate* the reagent to absorb oxygen, but Kurtz does not teach the container is ruptured to *release* the agent to absorb oxygen. (See Column 2, lines 1-17, Column 2, line 40 to Column 3, line 3).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1,2,4,5,8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claims 1,2,4,5,8, these claims recite a use of an apparatus but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

6. Regarding claim 2, the phrase "or similar material" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or similar material"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d) regarding "or the like".

Art Unit: 1761

7. Regarding claim 4, the term "not particularly stretchy" in claim 4 is a relative term which renders the claim indefinite. The term "not particularly stretchy" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1,2,4,5,8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kurtz (US 2971851).

10. Although not a preferred embodiment, Kurtz teaches providing reagent holding containers (i.e. packet) into a vacuum/hermetically sealed chamber wherein a change in pressure differential causes the packet to rupture completely and release the reagents, as recited in claims 1,2,4,8 (Column 2, line 65 to Column 3, line 3 and Column 2, lines 1-17). However, Kurtz teaches also teaches the container is designed to delaminate at an inner seal 4 when the pressure differential exceeds a specified value below the pressure that causes the entire container to rupture, as recited in claim 5 (Column 2, 40-43).

Art Unit: 1761

11. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kato et al. (JP 11-314668).

12. Kato et al. teach a vacuum chamber (i.e. vacuum bag) wherein a reagent, or deoxidizer, is released as a result of a pressure differential within the chamber (i.e. piercing the deoxidizer compartment (See English Abstract and English translation Paragraphs 8-13)).

13. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ruddick et al. (US 4784678).

14. Ruddick et al. teach a sealed container (e.g. compartment 34) is associated with a vacuum chamber (body 32) since the opening of item 31 results in a negative pressure applied to body 32 such that the seal of container 34 is ruptured (i.e. seal 35)and causes the reagent to be released into the chamber such that two components are brought together (See Column 5, lines 12-53).

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Herring et al. (US 2671424) and Lim et al. (US 4518103) teach chambers wherein a reduction in pressure results in the rupturing of a container and releasing of its contents into the chamber. DelDuca et al. (US 5928560), Hamon et al. (EP 46880 B1), Albert et al. (US 6123901), teach containers or bags wherein a compartment is ruptured to activate and/or release an oxygen absorbing agent. Miller

Art Unit: 1761



et al. (US 4038148) teach bags wherein a compartment is ruptured to activate an oxygen-indicating agent. Schneider et al (US 3294227) teaches rupturing 2 compartment bags for mixing purposes.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761



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